83-1434

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

CASE NUMBER: 83-1433

MOSES WILLIAMS and MANNIE BLACK, Apellants

vs.

BROTHER FREEMAN T. WYCHE, Appellee

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
FOR THE THIRD DISTRICT OF FLORIDA

# APPELLEE BRIEF

JESSE J. McCRARY, JR., ESQ.
ATTORNEY FOR APPELLEE

LAW OFFICES
McCRARY and VALENTINE
3050 Biscayne Boulevard
Suite 800
Miami, Florida 33137-4198
(305) 576-1500

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## QUESTION PRESENTED

WHETHER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION PROHIBITED THE DISTRICT COURT OF APPEALS FOR THE UNITED DISTRICT OF FLORIDA FROM RESOLVING A CHURCH PROPERTY DISPUTE.

## STATEMENT OF THE CASE

On March 31, 1983, Appellants filed a Verified Complaint for Injunctive Relief, Declaratory Judgment and Damages. On April 4, 1983, the Appellee filed a Sworn Counterclaim for Injunction and Other Relief (Apendix A). An Emergency Hearing on the respective parties Motion for Preliminary Injunction was held at which time the Trial Court ordered the Appellants to release all church property. The Trial Court also ordered an election of Elders of the church, by majority of the eligible members of the LIBERTY CITY CHURCH OF CHRIST, and to determine who would serve as Minister. Consistent with the Court's Order a meeting was held, following notice to all members, in which the majority of the Church membership sustained its original decision to retail the Appellee/Minister and to dismiss Appellants/ Elders.

The principals in the case at bar serve in their respective positions as servants of the LIBERTY CITY CHURCH OF CHRIST and its membership. The LIBERTY CITY CHURCH OF CHRIST is not governed by a "Mother Church" and as such is an independent Church body. The phrase "Church of Christ" represents a commonality between countless independent churches that recognize the doctrine taught by the New Testament of the "Church of Christ." Any individual, whether Elder, Minister, or otherwise, serving in an authoritative or representative capacity is appointed to such position by the majority of the respective Church of Christ. Consequently any removal from such a position is dictated by the majority membership. The Elders do not in and among themselves constitute a "rule making body." The Rules of Order are dictated by the New Testament of the Church of Christ and are implemented by the Minister and Elders conditioned on the approval or disapproval of the church membership represented by a majority voice.

This case arose through a dispute between Appellants, former Elders of the Church, and Appellee, the Minister. The

Elders attempted to terminate the Minister. The Minister's continued employment was predicated on the action by the majority of the Church members. The action of the membership was voiced through the Elders, whose appointment and tenure was predicated on the voice of the majority of the church membership. Consequently, the Elders of the Church were not empowered with unilateral authority to terminate the Appellee. Thus any attempt by the Appellants to terminate the Minister without majority membership approval was without effect.

Action was taken by the Minister and the members of the Church to dismiss the Appellants as Elders of the Church at a regularly scheduled meeting on March 8, 1983. The Appellee was retained as the Minister. The Appellee and his family have continued to reside in the Church's parsonage, pursuant to his tenure as Minister. The request by the Appellants to remove the Appellee from the parsonage was ultra vires in nature and without consent of the majority of the Church members. Furthermore, any action taken by or against the Appellee, with respect to the issuer herein, was imputed to his family.

Any and all authority granted to the Appellants as Elders of the Church to handle the Church's financial affairs was subject to majority control. Consequently, the Appellants were without unilateral authority to handle those affairs as they saw fit. When the Church members removed the Appellants as Elders of the Church, any and all authority over the financial affairs by the Elders was also taken from them.

The District Court of Appeal for the Third District of Florida affirmed the Trial Court's decision in favor of the Appellee per curiam. The Appellants are now seeking review of this decision by the United States Supreme Court by asserting that this Court has jurisdiction over this matter invoked under Title 28, United States Code, Section 28. Appellants alleged that the Trial Court's Order is a violation of the First and Fourteenth Amendments to the United States Constitution, as amended. The issues herein clearly do not represent disputes over religious principles or deprivation of any allege property rights of the Appellants.

## ARGUMENT

THE STANDARD OF REVIEW BY THE UNITED STATES COURT IS THE NECESSITY OF A FEDERAL QUESTION.

In order to have the United States Supreme Court review a decision, a Federal question must be presented. *Durley v. Mayo*, 351 U.S. 277 (1956). The Appellants have asserted that a Federal question has been presented because the District Court violated the First and Fourteenth Amendments to the United States Constitution by resolving the Church's property dispute. The Federal question must be presented in the State Court in order to preserve it for review. *Durley, supra.* The Appellants did not present the violation of the First and Fourteenth Amendments at the State Court level. Therefore, Appellants have not preserved a Federal question for review by this Court.

In resolving the Church property dispute between Appellants, the Elders, and Appellee, the Minister representing the majority of Church members, State law governing the holding of property by religious organizations, the terms of the Charter of the corporation, and the provisions pertinent to ownership and control of Church property are the provisions which must be relied upon in the State Court. *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970). The case at bar was decided according to the State law governing the holding of property by religious organizations since the Church did not have Articles of Incorporation which would set out provisions regarding the ownership and control of the Church's property. The State Court's resolution of the Church's property dispute did not involve any inquiry into religious doctrine nor deprive the Appellants of the Church's property and more importantly of any property right that they may have owned in violation of the First and Fourteenth Amendments of the United States Constitution. As a matter of fact, all property involved herein is still owned by the LIBERTY CITY CHURCH OF CHRIST and not by the Appellants or

Appellee. There is a want of a substantial Federal question and the appeal should be dismissed. *Id.* at 368.

## THE ORDER WAS ISSUED ACCORDING TO NEUTRAL PRINCIPLES OF STATE PROPERTY LAW.

Appellants are now attempting to argue that the State Courts had no jurisdiction over this case. The Appellants were the Plaintiffs in the initial cause of action. The Appellants initiated the action herein by filing the Verified Complaint for Injunctive Relief, Declaratory Judgment and Damages in the Eleventh Judicial Circuit In and For Dade County, Florida. This case was not dismissed at the trial court level.

In *Synanon Foundation, Inc. v. California*, 444 U.S. 1307 (1979), Justice Rehnquist stated that state courts could resolve property disputes in which hierarchial church organizations were involved in accordance with neutral principles of state property law. This case dealt with the Appellant's assertion that they as a church, were entitled to different treatment under the First and Fourteenth Amendments to the United States Constitution. The case at bar involves resolutions of the Church's property dispute between the Appellants, Elders who have asserted that they are the hierarchy of this Church and the Appellee, the Minister who represents the Church's members. To the contrary, the Appellants do not constitute the hierarchy of the Church. They are not cloth with any mystical or unilateral authority.

The District Court affirmed the Trial Court's Order per curiam. The Order was executed by the majority vote of the Church's members. The members elected to retain the Appellee as Minister and to remove the Appellants as the Elders of the Church. This Order was issued according to neutral principles of Florida's property law.

## THE STATE HAS A LEGITIMATE INTEREST IN RESOLVING THE CHURCH'S PROPERTY DISPUTE AND A CIVIL COURT IS A PROPER FORUM FOR RESOLUTION OF PROPERTY DISPUTES.

The majority of cases that have considered the question of whether civil courts, consistent with the First and Fourteenth Amendments to the United States, may resolve property disputes on the basis of neutral principles of law have been cases involving local churches affiliated with a hierarchial church organization. The approach to church property litigation has evolved in response to *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969). That case involved a property dispute between a national Presbyterian orgnization and local churches of that organization. On remand, the Court adopted what is now known as the neutral principal of law method for resolving church property disputes. The court examined the deeds of the property in question, as well as all documents relating to the matter, and awarded the property on the basis of legal title.

The property involved in the case at bar is the Church's finances and parsonage and not any property interest of the Appellant. The Appellants, as the Elders, were entrusted in their position to be responsible for the church's funds. The parsonage is the home of the Minister, Appellee, during his tenure with the Church. the majority of the Church's members voted to remove the Appellants as the Elders and to retain the Appellee as the Minister. This indicates a presumptive rule of majority representation.

In *Jones v. Wolf*, 443 U.S. 595 (1979), there was a church property dispute arising from a schism in a local church affiliated with a heirarchial church organization in which the United States Supreme Court remanded the case for further proceedings where both the state trial court and the state's highest court in reaching their decision in favor of the majority faction, applied a neutral principles of law approach which was developed in cases involving property disputes, without alluding to the fact that the

the local church itself was divided into factions. In the case at bar, both the state trial court and the state's appellate court are cognizant of the fact that the church is split into two factions because of nature in which the case arose. The Appellants, as the Elders, are attempting to control the Church's property even though the majority of the Church's members, represented by the Appellee voted to remove the Elders from their position. The substance of the dispute herein does not focus on a religious issue, but a simple issue of control of property owned as an independent church body. The state's adopted presumptive rule of majority representation is consistent with both the First Amendment and the neutral principles analysis. *Jones*, supra.

## CONCLUSION

The Court should disregard the Appellants' attempt to cloud the issues by characterizing the dispute as one over religious doctrine and property ownership. The true issue is whether the majority of the members of the LIBERTY CITY CHURCH OF CHRIST have the right to decide who is authorized to implement the doctrine of the Church, oversee its daily operation and to be entrusted with the fiduciary responsbility of protecting Church owned property.

This case should be dismissed for want of a substantial Federal question which the Appelants did not preserve in the State Courts. Furthermore, the District Court of Appeal for the Third District of Florida applied the neutral principles of law analysis which was consistent with the First and Fourteenth Amendments to the United States Constitution.

Respectfully submitted,

LAW OFFICES
McCRARY AND VALENTINE

BY _____
JESSE J. McCRARY, ESQ.
Attorney for Appellee

3050 Biscayne Boulevard
Suite 800
Miami, Florida 33137-4198
(305) 576-1500

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three (3) copies of the foregoing Brief was mailed to: ELLIS S. RUBIN, ESQ., Attorney for Appellants, 265 N.E. 26 Terrace, Miami, Florida 33137 this 16 day of March, 1984.

BY _____
JESSE J. McCRARY, JR., ESQ.

## APPENDIX A

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

CASE NUMBER: 83-11427

| | |
|---|---|
| MANNIE BLACK, Plaintiff<br>MOSES WILLIAMS, R. V. WALKER, and COMPANY, Counter/Defendants<br><br>vs.<br><br>MINISTER FREEMAN T. WYCHE, Defendant<br>MINISTER FREEMAN T. WYCHE On Behalf of LIBERTY CITY CHURCH OF CHRIST, Counter/Plaintiff. | SWORN COUNTER-CLAIM FOR INJUNCTIVE AND OTHER RELIEF |

COMES NOW, the Defendant/Counter-Defendant, MINISTER FREEMAN T. WYCHE, on behalf of LIBERTY CITY CHURCH OF CHRIST, by and through its undersigned Attorney and files this its Sworn Counter-Claim for Injunction and Other Relief against Counter-Plaintiffs, MOSES WILLIAMS, R. V. WALKER and COMMERCIAL BANK AND TRUST COMPANY and alleges:

### GENERAL ALLEGATIONS

(1) That the LIBERTY CITY CHURCH OF CHRIST is a

non-profit entity doing business at 1263 N.W. 67 Street, Miami Dade County, Florida (hereinafter referred to as "Church"). MINISTER FREEMAN T. WYCHE is the Minister of said Church and its Chief Operating Officer.

(2) That the COMMERCIAL BANK AND TRUST COMPANY is a Florida Banking Institution incorporated under Florida Law and is doing business in Dade County, Florida at 9301 N.W. 7 Avenue, Miami, Florida (hereinafter referred to as "Bank").

(3) That MOSES WILLIAMS is a resident of Miami, Dade County, Florida and over the age of eighteen (18) years and sui juris.

(4) That R. V. WALKER is a resident of Opa Locka, Dade County, Florida and over the age of eighteen (18) years and sui juris.

(5) That MOSES WILLIAMS serves in the capacity as Treasurer of the Church and R. V. WALKER serves in the capacity as Secretary.

(6) That the Church maintained a checking account with the Bank, account number 000-6950-000 (hereinafter referred to as "Account").

(7) That R. V. WALKER and MOSES WILLIAMS were given the fiduciary responsibility, exclusive of other members of the Church or any other individual, the authority to endorse all checks issued on the Church Account specified herein and to handle other Church financial matters such as savings, Certificate of Deposits and authority of bookkeeping, etc.

(8) That on or about March 10, 1983, R. V. WALKER and MOSES WILLIAMS signed a check on the Account herein in the amount of SEVENTEEN THOUSAND EIGHT HUNDRED FIFTY-FIVE DOLLARS AND EIGHTY-EIGHT ($17,855.88) CENTS. Said check was paid to the order of LIBERTY CITY CHURCH OF CHRIST and was withdrawn from the Account for the specific purposes of closing the same.

(9) That MINISTER FREEMAN T. WYCHE discovered that the Church Account had been closed on March 16, 1983, which was further confirmed by the Bank Statement dated March 11, 1983.

(10) That R. V. WALKER and MOSES WILLIAMS unlawfully and maliciously closed said Account without the expressed or implied consent of MINISTER WYCHE or by any other resolution of the members of the Church.

(11) That MINISTER WYCHE immediately approached MOSES WILLIAMS AND R. V. WALKER to determine why said Account had been closed and as to the whereabouts of the funds deposited therein.

(12) That after failing to get an adequate response from R. V. WALKER and MOSES WILLIAMS as to why said Account had been closed, MINISTER WYCHE was informed, however, that the funds had been transferred to the individual account of MOSES WILLIAMS and R. V. WALKER located at the Bank.

(13) That an official at the Bank informed MINISTER WYCHE that the Church funds had in fact been closed. The Bank official failed to provide MINISTER WYCHE with further information on the grounds that MOSES WILLIAMS, R. V. WALKER, and G. MANNIE BLACK were the only individuals authorized to endorse the Church's checks at the Bank and otherwise handle the Church's Account or that MINISTER WYCHE was not an authorized individual to sign on the Account.

(14) The Church passed a resolution authorizing new individuals to endorse and execute on a new account to be established by the Church at the Bank and tendered the same to an official of the Bank; however the Bank has refused to accept said resolution on the grounds that the Account was closed.

(15) That personal demand and mail demand by certified receipt has been served on R. V. WALKER and MOSES WILLIAMS, requesting that they return the subject funds to the Church's account and/or to MINISTER WYCHE; however, to date they have refused the Church's request.

(16) That the Bank by refusing to provide the Church with adequate information to determine the specific account in which the funds are deposited, to disclose the amount of said funds, and additional other pertinent information concerning said funds, continues to assist the Counter-Defendants, R. V.

WALKER and MOSES WILLIAMS, in the continued unlawful conversion of the Church's funds.

(17) That in addition to the Checking Account mentioned herein, Counter/Defendant, R. V. WALKER and MOSES WILLIAMS are also responsible for the Certificates of Deposit (hereinafter referred to as "C.Ds.") that are located at the Bank. Said C.Ds. are believed to total an approximate amount of TWELVE THOUSAND ($12,000.00) DOLLARS.

(18) That despite numerous requests by MINISTER WYCHE on behalf of the Church, the Defendants, R. V. WALKER and MOSES WILLIAMS have failed to disclose with respect to the amount and any other pertinent information concerning said C.Ds.

(19) That the Church has reason to believe that said C.Ds. have been unlawfully converted to the account of R. V. WALKER and MOSES WILLIAMS, or otherwise misappropriated from the Church's C.Ds. account by R. V. WALKER and MOSES WILLIAMS.

## COUNT I — INJUNCTION

(20) That this is an action for Injunctive Relief.

(21) That Defendant/Counter-Plaintiff adopts and realleges the allegations contained in Paragraphs One (1) through Twenty (20).

(22) That the Church has continued to incur debts and other obligations that cannot be satisfied due to the closing of the Church's Checking Account and the unauthorized transferring of said funds therein by the Counter-Defendants herein and the failure of the Counter-Defendants to disclose any information concerning the Certificates of Deposit.

(23) That the Church believes that the Counter-Defendants will continue to dissipate the Church's funds, unless immediate action is taken to demand the return of the subject funds and accounting of the same.

(24) That unless said funds are returned immediately to the Church and an immediate accounting of the same is made, it will suffer irreparable loss and damages and may be forced to close its doors.

(25) That the Plaintiff is currently suffering irreparable loss and damages

(26) That there is absolutely no adequate remedy of law for which the Church can avail itself to.

(27) That Counter-Plaintiff request a Temporary Restraining Order be issued against the Counter-Defendants, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS, without Notice enjoining from releasing, transferring or otherwise disposing of funds, which funds are currently in Counter-Defendants' possession.

If Counter-Plaintiff is required to give Notice of Application for said Temporary Restraining Order, it would cause a delay, Plaintiff will continue to suffer the irreparable damages stated herein.

(28) That Counter-Plaintiff has retained the firm of JESSEE J. McCRARY, JR., P.A. to represent it in this matter and has agreed to pay the firm a reasonable attorney's fee. Plaintiff is entitled to attorney's fee consistent with Florida Statute 57.105.

WHEREFORE, Defendants/Counter-Plaintiff prays as follows:

(a) That a Temporary Restraining Order be issued without Notice restraining the Counter-Defendants, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS from releasing, transferring or otherwise disbursing Church funds detailed herein.

(b) That a hearing be had forthwith in Plaintiff's Application for a Preliminary Injunction.

(c) That a Preliminary Injunction be issued enjoining Counter-Defendants, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS from releasing, transferring or otherwise disbursing Church funds to individuals not authorized by the Church.

(d) That on final hearing, Counter-Defendants, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS be enjoined from releasing, transferring or otherwise disbursing Church funds to individuals not authorized by the Church.

(e) That damages, both compensatory and punitive, be assessed against Counter-Defendants, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS for all damages caused by Defendants' actions.

(f) That Counter-Plaintiff be awarded damages as aforesaid, interest, costs and attorney's fees.

(g) That this Court order such additional relief as may be just and equitable.

## COUNT II — CONVERSION

(29) This is an action for conversion and damages in excess of FIVE THOUSAND ($5,000.00) DOLLARS.

(30) Plaintiff adopts and re-alleges the allegations contained in Paragraphs One (1) through Twenty-Nine (29) and further alleges:

(31) That the acts complained of in the Complaint herein constitute conversion for which the Defendants, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS are responsible for damages caused by their action.

WHEREFORE, Counter-Plaintiff prays:

(a) That damages, both compensatory and punitive, be assessed against the Defendants for all damages caused by Defendants' actions.

(b) That Counter-Plaintiff be awarded damages as foresaid, interest, cost and attorney's fees.

(c) That this Court order such additional relief as may be just and equitable.

## COUNT III — ACCOUNTING

(32) That this is an action for accounting as to all Church funds and financial matters for which the Counter-Defendants, R. V. WALKER and MOSES WILLIAMS are privity to or otherwise have control and authority over with damages in excess of FIVE THOUSAND ($5,000.00) DOLLARS.

(33) Counter-Plaintiff adopts and re-alleges the allegations contained in Paragraphs One (1) through Thirty-Two (32) and further alleges:

(34) That in addition to checking account and Certificates

of Deposit mentioned herein, the Counter-Defendants, R. V. WALKER and MOSES WILLIAMS held a fiduciary responsibility to maintain the Church's financial records.

(35) That despite many requests by the Counter-Plaintiffs to the Counter-Defendants, R. V. WALKER and MOSES WILLIAMS to release the financial record and to otherwise disclose information in said records, the Counter-Defendants, R. V. WALKER and MOSES WILLIAMS have failed to disclose said information.

(36) The exact amount contained in the financial records or other information contained therein is unknown to the Plaintiff and cannot be stated herein, that the transactions contained in said records are so voluminous that a correct amount or statement of the nature of the information contained therein cannot be ascertained without an accounting.

WHEREFORE, Counter-Plaintiff prays that:

(a) That the Counter-Defendants, R. V. WALKER and MOSES WILLIAMS be compelled to account for all transactions for which they are responsible as alleged herein.

(b) That said Counter-Defendants be ordered to pay the amount to be due from the Counter-Defendants to the Counter-Plaintiff as a result of the account, including interest.

(c) That Counter-Plaintiff be awarded cost and attorney's fees.

(d) That this Court order such additional relief as may be just and equitable.

MINISTER FREEMAN T. WYCHE

STATE OF FLORIDA)
COUNTY OF DADE ) SS

BEFORE ME, the undersigned authority, personally appeared MINISTER FREEMAN T. WYCHE, to me well known to be the person described in and who executed the foregoing Sworn Complaint for Injunction and Other Relief, who, upon first duly sworn, deposes and states that he has read the foregoing Sworn Complaint, that the allegations therein are true and correct and that he executed the same for the purposes therein expressed.

WITNESS my hand and official seal at Miami, said County and State, this _____ day of April, 1983.

_____
NOTARY PUBLIC, State of Florida
at Large

My commission expires:

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THE UNDERSIGNED Attorney hereby certifies that two (2) copies of the foregoing brief were mailed this _____ day of March, 1984 to ELLIS J. RUBIN, ESQ., 265 N.E. 26 Terrace, Miami, Florida 33137.

Respectfully submitted,

LAW OFFICES
McCRARY AND VALENTINE

BY _____
JESSE J. McCRARY, JR., ESQ.
Attorney for Plaintiff

3050 Biscayne Boulevard
Suite 800
Miami, Florida 33137-4198
(305) 576-1500

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